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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**
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11 In re:	Chapter 7 Case No. 08-41153 LT
12 JAVED WAHAB, 13 SSN: xxx-xx-0300 14 Debtor.	
15 HOWARD B. ALLAN, 16 Plaintiff, 17 vs. 18 JAVED WAHAB, 19 Defendant.	Adv. Proc. No: 08-4128-AT Judge: Leslie J. Tchaikovsky

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21 **EX PARTE APPLICATION RE MOTION TO RESTORE PROCEEDING TO**
22 **STATUS CONFERENCE CALENDAR**

23 Plaintiff HOWARD B. ALLAN respectfully submits his *ex parte* application to restore
24 the above adversary proceeding to the status conference calendar, pursuant to the terms of
25 this Court's Order Dismissing Adversary Proceeding with 60 Days' Stay, entered on August
26 24, 2008 as Document No. 10.

27 Plaintiff seeks to have this matter restored to the status conference calendar for the
28 following reasons:

1 1. On June 2, 2008, plaintiff HOWARD B. ALLAN filed his adversary proceeding
2 complaint alleging claims sounding in fraud against debtor/defendant JAVED WAHAB. (See
3 Declaration of Phillip M. Adleson, Esq., ¶1; see also **Docket No. 1**, Adversary Case No. 08-
4 04128.)

5 2. The summons was issued on or about June 3, 2008. Under Federal Bankruptcy
6 Rule 7012, and pursuant to the express terms of the summons, defendant was required to file
7 a responsive pleading no later than July 3, 2008. (See Declaration of Phillip M. Adleson,
8 Esq., ¶2; see also **Docket No. 2**, Summons Issued on Javed Wahab Answer Due 7/3/2008.)

9 3. On June 11, 2008, a copy of the summons and a copy of the certificate of
10 service of the summons and complaint were served on defendant JAVED WAHAB. (See
11 Declaration of Phillip M. Adleson, Esq., ¶3; see also **Docket No. 4**, Summons Service
12 Executed on Howard B. Allan 6/11/2008 and Notice of Status Conference.)

13 4. On or about July 23, 2008, no answer or responsive pleading having been filed
14 by defendant JAVED WAHAB, plaintiff caused to be filed a request to enter the default of
15 Defendant JAVED WAHAB, pursuant to Federal Rule of Civil Procedure 55(a) and Federal
16 Bankruptcy Rule 7055 for failure to plead within the time period permitted by the Federal
17 Bankruptcy Rules. (See Declaration of Phillip M. Adleson, Esq., ¶4; see also **Docket No. 5**,
18 Proposed Request for Entry of Default Re: Javed Wahab.)

19 5. Thereafter, on or about July 24, 2008, the Clerk entered default against
20 defendant JAVED WAHAB. (See Declaration of Phillip M. Adleson, Esq., ¶5; see also **Docket**
21 **No. 6**, Clerk's Entry of Default as to Defendant Javed Wahab.)

22 6. On August 21, 2008, this Court held a status conference; the only party
23 appearing was plaintiff HOWARD B. ALLAN through his counsel. Plaintiff's counsel advised
24 of the above circumstances and requested additional time to request entry of default
25 judgment against defendant, so that documentary evidence could be obtained to support the
26 request for an award of damages. (See Declaration of Phillip M. Adleson, Esq., ¶6; see also
27 **Docket No. 9**, Order Dismissing Adversary Proceeding With 60 Days Stay.) By its order, the
28 Court ordered that the action be dismissed with a 60-day stay unless prior to the running of

1 the 60-day period, one of the parties *filed and scheduled for hearing* a motion to restore the
2 adversary proceeding to the status conference calendar. (See *id.*)

3 7. By this application, plaintiff seeks to have the adversary proceeding restored to
4 the status conference calendar to allow him additional time to submit his request for entry of
5 judgment, declaration in support of this request, and proposed judgment. Plaintiff has been
6 working diligently to gather the necessary information and documentation to support his claim
7 for an award of damages in this proceeding but was unable to get the documents filed until
8 October 17, 2008. Because this date is close to the date on which the 60-day period will run
9 (October 20, 2008), plaintiff requests to have the matter restored to the status conference
10 calendar so that the Court has sufficient time to review plaintiff's request for entry of judgment
11 prior to final dismissal of the proceeding. This application is timely filed and set for hearing
12 prior to the running of the 60-day period.

13 8. Good cause exists for restoring the matter to the status conference calendar, as
14 plaintiff has diligently worked to obtain and finalize the documentation supporting his request
15 for entry of judgment by default, and because the request for entry of judgment, the
16 supporting declaration and documents, and the proposed judgment have now been finalized
17 and will be filed on October 17, 2008. The above-stated facts are set forth in the
18 accompanying Declaration of Phillip M. Adleson, filed simultaneously with this Request to
19 Enter Default.

20 For each and all of the foregoing reasons, plaintiff HOWARD B. ALLAN respectfully
21 requests that the adversary proceeding be restored to the status conference calendar and a
22 new status conference date be set.

23 Dated: October 16, 2008

Respectfully submitted,

24 ADLESON, HESS & KELLY, APC

25
26 By: Phillip M. Adleson
27 PHILLIP M. ADLESON, ESQ.
PAMELA A. BOWER, ESQ.
28 Attorneys for Plaintiff HOWARD B. ALLAN